




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MEMORANDUM

SUBJECT: CWA Section 309 Order – United Milwaukee Scrap, LLC

FROM: Noel Vargas, Environmental Engineer
Water Enforcement and Compliance Assurance Branch (WECAB)
WECAB Section 1

THROUGH: Dean Maraldo, Chief 
WECAB

TO: Tinka G. Hyde
Director, Water Division

The EPA is issuing this Administrative Order (AO) to United Milwaukee Scrap, LLC (UMS), as a result of findings during a multimedia inspection. UMS owns and operates four scrap yards throughout the Milwaukee urban area. The sanitary collection system in Milwaukee is both combined and separated. One of the UMS facilities, located within Milwaukee's separate sewer system, failed to apply for an industry-specific stormwater discharge permit. All UMS facilities are located within the Milwaukee urban area, an environmental justice (EJ) area. We are not able to estimate if pollution reductions will result from this action. Pollution reductions are likely minor.

Issuance of this AO is recommended as a way to have UMS and its facilities achieve compliance with requirements under the Clean Water Act, supporting WECAB's efforts to meet one of OECA's priorities for this fiscal year.

Attachments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 03 2011

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7009 1680 0000 7660 9586
RETURN RECEIPT REQUESTED

David Arnstein, President
United Milwaukee Scrap, LLC
3232 W. Fond Du Lac Avenue
Milwaukee, Wisconsin 53210

Subject: United Milwaukee Scrap, LLC Order for Compliance and Information
Pursuant to 33 U.S.C. §§ 1318 and 1319(a)
Docket No. V-W-11-AO-10

Dear Mr. Arnstein:

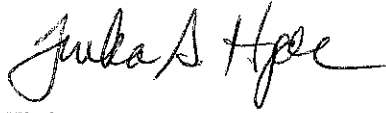
The U.S. Environmental Protection Agency is issuing this administrative order (Order) to United Milwaukee Scrap, LLC ("UMS" or "you"), under Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a). In the Order, EPA asserts that UMS has not complied with provisions under the National Pollutant Discharge Elimination System (NPDES) and seeks to bring you back into compliance with the terms of the CWA.

On August 18-19, 2010, representatives of EPA conducted a multimedia inspection at UMS facilities. Information gathered during the field inspections, and additional information provided by you, demonstrates that UMS has discharged untreated storm water to Milwaukee's separate sewer system without a proper NPDES permit, in violation of the CWA.

Please send your written responses to the addresses specified in the Order. Please note that within 5 days of this Order's receipt, UMS may request a conference with EPA to discuss the terms of the Order or any other information you feel we should consider. Page 4 of the Order includes details regarding how and when to request a conference.

If you have any questions or concerns, please contact Noel Vargas, at (312) 353-3575 or vargas.noel@epa.gov, or your legal counsel may contact Stuart Hersh, Associate Regional Counsel, at (312) 886-6235 or hersh.stuart@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde". The signature is fluid and cursive, with the first name "Tinka" being more prominent.

Tinka G. Hyde
Director, Water Division

cc: Peter Topczewski, WDNR-SE
Tom Mugan, WDNR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**United Milwaukee Scrap, LLC
Milwaukee, Wisconsin**

) **Docket No.: V-W-11-AO- /0**
)

) **ORDER FOR COMPLIANCE**
) **AND REQUEST FOR INFORMATION**
) **UNDER SECTIONS 308 AND 309(a)**
) **OF THE CLEAN WATER ACT,**
) **33 U.S.C. §§1318 AND 1319(a)**
)

STATUTORY AUTHORITY

1. The U.S. Environmental Protection Agency, makes the following **FINDINGS** and issues the following **ORDER** to United Milwaukee Scrap, LLC (Respondent) pursuant to the authority of the Administrator of EPA under sections 308 and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318 & 1319(a). The Administrator of the EPA delegated this authority to issue such Orders to the Regional Administrator, EPA, Region 5, who then redelegated the authority to the Director of the Water Division, EPA, Region 5.
2. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States by any person except in compliance with a permit issued under the authority of the CWA.
3. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator to require the owner or operator of any point source to establish and maintain records, make reports, install, use and maintain monitoring equipment, sample effluent and provide any other information she may reasonably require to carry out the objectives of the CWA.
4. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), states that whenever the Administrator finds a person in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), she may issue an order requiring that person to comply with the requirements of the CWA.
5. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System ("NPDES") by which the Administrator may issue permits for the discharge of pollutants to the waters of the United States subject to certain conditions. On February 4, 1974, EPA approved the State of Wisconsin Department of Natural Resources ("WDNR") program to issue NPDES permits pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The WDNR is the permitting authority for the State of Wisconsin (State). EPA retains the authority to enforce the CWA in Wisconsin.

FINDINGS

6. United Milwaukee Scrap (UMS), LLC, is a ferrous and non-ferrous scrap metal recycling facility, operating in Milwaukee, Wisconsin.
7. On August 18 – 19, 2010, personnel from the EPA conducted a multimedia inspection at UMS.
8. Respondent, UMS, is a “person” as that term is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.
9. At all times relevant to this Order, Respondent owned and operated four facilities in the Milwaukee area. These facilities are located at the following sites:
3232 W. Fond du Lac Ave. (Fond du Lac facility); 3027 W. Concordia Ave. (Concordia facility); 3295 W. Townsend St. (Townsend facility); and 8520 W. Kaul Ave. (Kaul facility).
10. At all times relevant to this Order, UMS and its Fond du Lac facility was a “point source” of a “discharge” of “pollutant(s)” to the Milwaukee combined sewer system.
11. At all times relevant to this Order, UMS and its Concordia facility was a “point source” of a “discharge” of “pollutant(s)” to the Milwaukee combined sewer system.
12. At all times relevant to this Order, UMS and its Townsend facility was a “point source” of a “discharge” of “pollutant(s)” to the Milwaukee combined sewer system.
13. At all times relevant to this Order, UMS and its Kaul facility was a “point source” of a “discharge” of “pollutant(s)” to the Milwaukee separate sewer system. The Kaul facility discharges stormwater to an intermittent stream (presumably named Beaver Creek), which is tributary to the Menomonee River. The Menomonee River is tributary to Lake Michigan. These streams are “navigable waters”, as those terms are defined by Section 502(7) of the CWA, 33 U.S.C. § 1362.
14. At all relevant times to this Order, UMS and its facilities are “an industry” identified at 40 C.F.R. § 122.26(b)(14) and is subject to the National Pollutant Discharge Elimination System (“NPDES”) permitting requirements of Section 402(p) of the CWA, 33 U.S.C. §§ 1318 and 1342(p), and 40 C.F.R. Part 122.
15. On October 31, 2002, the WDNR issued a stormwater permit under Wisconsin’s Pollutant Discharge Elimination System (“WPDES”) permitting program under General Permit No: WI-S058831-1 (stormwater general permit) applicable to any facility engaged in recycling of scrap and waste materials. Part B(1) of the stormwater general permit requires demonstration and implementation of a stormwater pollution prevention

plan ("SWPPP"). The permittee develops the SWPPP for their facilities and implements best management practices ("BMP") to reduce the potential for stormwater contamination.

16. UMS is a facility engaged in recycling of scrap and waste materials.
17. UMS elected to participate in a cooperative compliance program to manage compliance with the stormwater general permit. The stormwater general permit only covered the Townsend facility because "a portion of the facility drains to a storm sewer rather than the combined sewer system."
18. Information provided by the Milwaukee Metropolitan Sewerage District indicated that the Kaul facility is in the separate sewer system and the other facilities are in the combined sewer system.
19. As required by 40 C.F.R. Part 122, the Kaul facility must be covered by the stormwater general permit because it is located within the separate sewer system in Milwaukee (outside the CSS area).
20. The Kaul facility has not developed a SWPPP nor implemented BMP to reduce the potential for stormwater contamination.

ORDER for COMPLIANCE AND INFORMATION REQUEST

Based upon the Findings, EPA requests the following information pursuant to Section 308(a) of the CWA and orders the following actions pursuant to Section 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a):

21. Within 45 days of the effective date of this Order, Respondent shall submit a stormwater general permit application for its Kaul facility.
22. Within 45 days of the effective date of this Order, Respondent shall revise its SWPPP for the Townsend facility and apply it to its Kaul facility. Respondent must submit a copy of the revised SWPPP, which identifies all BMP and stormwater management measures applicable to its Kaul facility.
23. Respondents shall submit all of the information required by this Order to:

Water Enforcement Compliance Assurance Branch (WC-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
Attn: Noel Vargas

24. Respondent shall submit a copy of all documents required by this Order to:

Wisconsin Department of Natural Resources
Southeast District Office
Bureau of Watershed Management
2300 North Martin Luther King Drive
Milwaukee, Wisconsin, 53212
Attn: Peter Topczewski

EFFECTIVE DATE AND OPPORTUNITY TO CONFER

This Order will become effective immediately from the date Respondent receives it unless, within 5 days of receipt of the Order, Respondent requests an informal conference to discuss the Order and to present any information it wishes EPA to consider regarding this Order.

If Respondent requests an informal conference, it will be held at the EPA Region 5 offices at 77 West Jackson Boulevard, Chicago, Illinois. Alternatively, the informal conference can be conducted by telephone at Respondent's request. The informal conference shall be held within 5 days from the date of the request.

Rather than request an informal conference, Respondent may, within 5 days of receipt of the Order, request the opportunity to submit written information or arguments concerning the Order. Such written information and arguments must be submitted within 5 days of such request.

Unless EPA withdraws or modifies the Order based on information presented in the informal conference or on written submittals by Respondent, the Order will become effective 5 days after the informal conference or receipt of such written information.

Respondent may be represented by counsel at the informal conference. The informal conference is not an evidentiary hearing, does not constitute a proceeding to challenge the Order, and does not give Respondent a right to seek review of the Order.

To request an informal conference, Respondent should contact Noel Vargas, at (312) 353-3575, or Respondent's counsel may contact Stuart Hersh, of the Office of Regional Counsel, at (312) 886-6235.

GENERAL PROVISION

Any written statements and reports submitted pursuant to this Order must be notarized and returned under an authorized signature certifying that all statements contained therein are true and accurate to the best of the signatory's knowledge and belief. Any documents submitted

to EPA pursuant to this Order should be certified as authentic to the best of the signatory's knowledge and belief.

Should the signatory find at any time after submittal of the requested information that any portion of its response is false or inaccurate, the signatory shall notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), as well as 18 U.S.C. §§ 1001 and 1341.

The information required to be maintained or submitted pursuant to this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

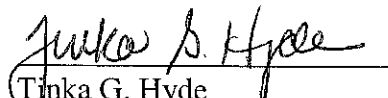
Pursuant to 40 C.F.R. Part 2, Subpart B, Respondent is entitled to assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as defined in 40 C.F.R. § 2.302(a)(2). If Respondent fails to assert a claim of business confidentiality, EPA may make all submitted information available to the public without further notice. Information which is subject to a claim of business confidentiality may be available to the public only to the extent provided in 40 C.F.R. Part 2, Subpart B.

The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. EPA may assess civil administrative penalties under 33 U.S.C. § 1319(g) or seek civil judicial penalties and civil injunctive relief under 33 U.S.C. § 1319(b). Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

Neither issuance of this Order by EPA nor compliance with its terms affects Respondent's ongoing obligation to comply with the CWA and any other Federal or State law or regulation, nor does it preclude further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited in this Order or any other violations of the CWA committed by Respondent. Respondent's failure to comply with this Order may subject Respondent to an enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319. EPA specifically reserves the right to seek any or all of the remedies authorized under 33 U.S.C. § 1319 for any violation cited in this Order, for any violation of this Order, and for any other violations of the CWA committed by Respondent.

Any information submitted in response to this Order may be used by EPA in support of an administrative, civil or criminal action against Respondent.

Date: June 3, 2011


Tinka G. Hyde
Director, Water Division

Attachment

AUTHORITY AND CONFIDENTIALITY PROVISIONS

Authority

Information requests are made under authority provided by Section 308 of the Clean Water Act, 33 U.S.C. 1318. Section 308 provides that: "Whenever required to carry out the objective of this Act, ...the Administrator shall require the owner or operator of any point sources to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment and methods (including where appropriate, biological monitoring methods), (iv) sample such effluent... and (v) provide such other information as he may reasonably require; and the Administrator or his authorized representative, upon presentation of his credentials, shall have a right of entry to...any premises in which an effluent source is located or in which any records...are located, and may at reasonable times have access to and copy any records...and sample any effluents..."

Please be advised that the submission of false statements is subject to federal prosecution under 18 U.S.C. §1001 and that this or any other failure to comply with the requirements of Section 308 as requested by U.S. EPA may result in enforcement action under the authority of Section 309 of the Clean Water Act, which provides for specified civil and/or criminal penalties.

Confidentiality

U.S. EPA regulations concerning confidentiality and treatment of business information are contained in 40 CFR Part 2, Subpart B. Information may not be withheld from the Administrator or his authorized representative because it is viewed as confidential. However, when requested to do so, the Administrator is required to consider information to be confidential and to treat it accordingly, if disclosure would divulge methods or processes entitled to protection as trade secrets (33 U.S.C. §1318(b) and 18 U.S.C. §1905), except that effluent data (as defined in 40 CFR §2.302(a)(2)) may not be considered by U.S. EPA as confidential.

The regulations provide that one may assert a business confidentiality claim covering part or all of any trade secret information furnished to U.S. EPA at the time such information is provided to the Agency. The manner of asserting such claims is specified in 40 CFR §2.203(b). In the event that a request is made for release of information covered by such claim of confidentiality or the Agency otherwise decides to make determination as to whether or not such information is entitled to such confidential treatment, notice will be provided to the claimant prior to any release of the information. However, if no claim of confidentiality is made when information is furnished to U.S. EPA, any information submitted to the Agency may be made available to the public without prior notice.

Note:

This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

bcc: AO File
Coleman
Kuefler/Vargas
Hersh